

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

KOLU STEVENS, et al,
Plaintiffs,

v.

MILTON L. MACK, JR., et al,
Defendants

Case No.: 18-cv-757
Honorable Paul L. Maloney

MOTION

**

**ORAL ARGUMENT
IS NOT REQUESTED**

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PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

NOW COMES Plaintiffs KOLU STEVENS, PATRICK GREENHOE, and CLAUDETTE GREENHOE, by counsel, and moves for leave to file a second amended complaint.

On March 10, 2020, this Court issued an opinion and order adopting in part and rejecting in part the magistrate's report and recommendation. **R&R, ECF No. 38.** As part of that order, this Court denied the various Rule 12(b) motions and directed Defendants to file answers to the complaint within the time provided by the rules. ***Id.*, PageID.457.**

The operative complaint was filed in 2018—nearly two years ago. The claim(s) remain the same but a few changes are sought to be made to the pleading. First, there was an allegation containing an incorrect date that needed to be fix. Second, Plaintiffs desire to add an additional form of relief for nominal damages against two of the three defendants in their personal capacities. Third, it has been formally announced that Milton Mack, Jr. will be leaving his post and his successor, Thomas Boyd, will assume the SCAO Administrator's position on March 23, 2020. See https://courts.michigan.gov/News-Events/press_releases/Documents/SCAO%20Changes%20Media%20Release.pdf.

This will further require a change to the pleadings as well.

On March 11, 2020, the undersigned emailed and attached a proposed stipulation-and-order to all attorneys of record to seek their consent to file such an amended pleading. No one responded. This motion now follows.

MEMORANDUM OF LAW

“A party may amend its pleading once as a matter of course within... 21 days after service of a responsive pleading (if the pleading is one to which a responsive pleading is required) or 21 days after service of a motion under Rule 12(b), (e), or (f), *whichever is earlier.*” FRCP 15(a)(1)(b). That time has passed by the latter prong of the rule. Otherwise, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave.”

Factors that may affect that determination of whether to grant leave “include undue delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendment, undue prejudice to the opposing party, and futility of the amendment.” *Seals v. Gen. Motors Corp.*, 546 F.3d 766, 770 (6th

Cir. 2008). In the absence of these considerations and given the federal judiciary's "liberal amendment policy," *Morse v. McWhorter*, 290 F.3d 795, 800 (6th Cir. 2002), the leave sought should, as the rules require, be "freely given." *Pittman v. Experian Information Solutions, Inc.*, 901 F.3d 619, 640 (6th Cir. 2018); FRCP 15(a)(2).

ARGUMENT

None of the factors outlined in *Seals* warrants denial of the proposed amendment. A copy of the proposed amendment is attached as an exhibit.

In addition, there makes little sense in having Defendants file an answer when an amendment is desired and the parties named will change (on March 23, 2020) due to the changing of governmental officials.

RELIEF REQUESTED

WHEREFORE, the Court is requested to grant leave to allow Plaintiffs to file their Second Amended Complaint on or after March 23, 2020 upon Thomas Boyd becoming the new State Court Administrator and direct Defendants to simply answer that amended complaint within 14 days thereafter. FRCP 15(a)(3).

Date: March 12, 2020

RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison

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CERTIFICATE OF SERVICE

I, the undersigned attorney of record, hereby certify that on the date stated below, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel or parties of record.

Date: March 12, 2020

RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison

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